

77-36-2.7 Dismissal -- Diversion prohibited -- Plea in abeyance -- Pretrial protective order pending trial.

- (1) Because of the serious nature of domestic violence, the court, in domestic violence actions:
 - (a) may not dismiss any charge or delay disposition because of concurrent divorce or other civil proceedings;
 - (b) may not require proof that either party is seeking a dissolution of marriage before instigation of criminal proceedings;
 - (c) shall waive any requirement that the victim's location be disclosed other than to the defendant's attorney and order the defendant's attorney not to disclose the victim's location to the client;
 - (d) shall identify, on the docket sheets, the criminal actions arising from acts of domestic violence;
 - (e) may dismiss a charge on stipulation of the prosecutor and the victim; and
 - (f) may hold a plea in abeyance, in accordance with the provisions of Chapter 2a, Pleas in Abeyance, making treatment or any other requirement for the defendant a condition of that status.
- (2) When the court holds a plea in abeyance in accordance with Subsection (1)(f), the case against a perpetrator of domestic violence may be dismissed only if the perpetrator successfully completes all conditions imposed by the court. If the defendant fails to complete any condition imposed by the court under Subsection (1)(f), the court may accept the defendant's plea.
- (3)
 - (a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any defendant is charged with a crime involving domestic violence, the court may, during any court hearing where the defendant is present, issue a pretrial protective order, pending trial:
 - (i) enjoining the defendant from threatening to commit or committing acts of domestic violence or abuse against the victim and any designated family or household member;
 - (ii) prohibiting the defendant from harassing, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;
 - (iii) removing and excluding the defendant from the victim's residence and the premises of the residence;
 - (iv) ordering the defendant to stay away from the residence, school, place of employment of the victim, and the premises of any of these, or any specified place frequented by the victim and any designated family member; and
 - (v) ordering any other relief that the court considers necessary to protect and provide for the safety of the victim and any designated family or household member.
 - (b) Violation of an order issued pursuant to this section is punishable as follows:
 - (i) if the original arrest or subsequent charge filed is a felony, an offense under this section is a third degree felony; and
 - (ii) if the original arrest or subsequent charge filed is a misdemeanor, an offense under this section is a class A misdemeanor.
 - (c)
 - (i) The court shall provide the victim with a certified copy of any pretrial protective order that has been issued if the victim can be located with reasonable effort.
 - (ii) The court shall also transmit the pretrial protective order to the statewide domestic violence network.
 - (d) Issuance of a pretrial or sentencing protective order supercedes a written jail release agreement or a written jail release court order issued by the court at the time of arrest.

- (4)
- (a) When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a domestic violence offense, the specific reasons for dismissal shall be recorded in the court file and made a part of the statewide domestic violence network described in Section 78B-7-113.
 - (b) The court shall transmit the dismissal to the statewide domestic violence network.
 - (c) Any pretrial protective orders, including jail release court orders and jail release agreements, related to the dismissed domestic violence criminal charge shall also be dismissed.
- (5) When the privilege of confidential communication between spouses, or the testimonial privilege of spouses is invoked in any criminal proceeding in which a spouse is the victim of an alleged domestic violence offense, the victim shall be considered to be an unavailable witness under the Utah Rules of Evidence.
- (6) The court may not approve diversion for a perpetrator of domestic violence.

Amended by Chapter 384, 2010 General Session